TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 342

AMALGAMATED UTILITY WORKERS, AFFILIATED WITH UTILITY WORKERS ORGANIZING COMMITTEE, CONGRESS OF INDUSTRIAL ORGANIZATIONS, PETITIONER,

vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1939.

CERTIORARI GRANTED OCTOBER 16, 1939.

SUPREME COURT OF THE UNITED STATES

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vs.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ITS AFFILIATED COMPANIES, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol.1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

In the Matter of the Application of

AMALGAMATED UTILITY WORKERS, affiliated with Utility Workers Organizing Committee, Congress of Industrial Organizations,

TO PUNISH

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, the Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, For Contempt.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and its Affiliated Companies, et al., Petitioners,

AGAINST

NATIONAL LABOR RELATIONS BOARD, ET AL., Respondents.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-825, ET AL., Petitioners,

AGAINST

NATIONAL LABOR RELATIONS BOARD, ET AL., Respondents.

STIPULATION AS TO TRANSCRIPT OF RECORD, ETC.—Filed August 25, 1939

The movant Amalgamated Utility Workers, etc., having informed the respondents Consolidated Edison Company of New York, Inc., et al., that it is about to apply to the Supreme Court of the United States for a writ of certiorari [fol. 2] to review, in the respect hereinafter stipulated, the Order made on or about June 2, 1939, by the United States Circuit Court of Appeals for the Second Circuit, which denied the movant's motion for an Order adjudging

Consolidated Edison Company of New York, Inc., its affiliated Companies, and their directors, officers and agents, in contempt of Court, etc.; and the undersigned parties having agreed, by their respective solicitors, that the petitioner for certiorari need not for such purpose designate for inclusion the complete record and all the proceedings and papers herein:

It is hereby stipulated and agreed:

I. That the petitioner for certiorari intends to bring up for review, and to rely upon, only the question as to whether or not the movant Amalgamated Utility Workers has standing to make and maintain its said motion, which was denied by the United States Circuit Court of Appeals for the Second Circuit.

II. That in view of the foregoing, the record to be certified by the Clerk of this Court, and printed, shall contain only the following papers on file in this Court:

1. Notice of Motion served by the solicitors for the Amalgamated Utility Workers.

2. Petition and Motion of Amalgamated Utility Workers dated May 10, 1939, with notation of verification.

3. Answer of Consolidated Edison Company of New York, Inc., et al., dated May 22, 1939, with notation of verification.

4. Affidavit of Floyd L. Carlisle, sworn to May 22, 1939, [fol. 3] and accompanying the Answer, together with Exhibits A to H, both inclusive, attached to such Affidavit.

5. Response of National Labor Relations Board, dated May 13, 1939, by its General Counsel and Associate General Counsel, to the said motion of the movant Amalgamated Utility Workers.

6. Memorandum Opinion of the United States Circuit Court of Appeals for the Second Circuit, denying the said motion of the Amalgamated Utility Workers.

7. Order of the United States Circuit Court of Appeals for the Second Circuit, made June 2, 1939, denying the motion of the Amalgamated Utility Workers.

III. That upon the hearing of any application by Amalgamated Utility Workers, etc., for such a writ of certiorari,

and upon any hearing of the case by and before the Supreme Court of the United States if certiorari be granted, the respondents Consolidated Edison Company of New York, Inc., et al., may submit to the Court, and refer to, any other notices of motion or any other affidavits submitted with the motion, the petition, or the answer, and which were filed with the Circuit Court of Appeals for the Second Circuit by either side; and that any other party to the proceeding may likewise submit to the Court and refer to any other notices or affidavits which were filed with this Court upon such motion.

Dated, New York, August 24, 1939.

Boudin, Cohn & Glickstein, Solicitors for Amalgamated Utility Workers, etc.

Whitman, Ransom, Coulson & Goetz, Solicitors for Consolidated Edison Company of New York, Inc., and its Affiliated Companies.

[fol. 4] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

NOTICE OF MOTION

Sirs:

Please take notice that on the 15th day of May, 1939, at 10:30 A. M., or as soon thereafter as counsel can be heard, a motion as per the attached copy, will be made [fol. 5] before the Court, to adjudge Consolidated Edison Company of New York, Inc., and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, their officers, directors and agents in contempt.

Boudin, Cohn & Glickstein, Solicitors for Amalgamated Utility Workers, the Moving Party Herein.
By Hyman W. Glickstein.

To:

Whitman, Ransom, Coulson & Goetz, Esqs., Solicitors for Consolidated Edison Company of New York, Inc., et al., 40 Wall Street, New York City.

Charles Fahy, Esq., General Counsel, National Labor Relations Board, Shoreham Building, Washington, D. C.

Allan Perl, Esq., Acting Regional Attorney, National Labor Relations Board, Woolworth Building, New York City.

Isaac Lobe Straus, Delafiedd, Marsh, Porter and Hope, and Claude A. Hope, Esqs., Solicitors for International Brotherhood of Electrical Workers, et al., 20 Exchange Place, New York City.

Consolidated Edison Company of New York, Inc. and its Affiliated Companies, 4 Irving Place, New York City.

[fol. 6] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

MOTION FOR ORDER ADJUDGING CONSOLIDATED EDISON CO., ET AL., IN CONTEMPT

Now comes the Amalgamated Utility Workers, affiliated with the Utility Workers Organizing Committee, C. I. O., formerly known as United Electrical & Radio Workers of America, and moves this Court to adjudge Consolidated Edison Company of New York, Inc. and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and [fol. 7] Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company, hereinafter referred to as the "Companies", and their officers, directors and agents, in contempt of this Court for violation of the decree heretofore made and entered by this Court on March 21st, 1938, as amended by an order of this Court, made and entered on the 21st day of January, 1939, in certain proceedings entitled Consolidated Edison Company of New York, Inc. et al., petitioners, against National Labor Relations Board, respondents, and as reasons for such motion shows the Court:

1. The National Labor Relations Board, hereinafter referred to as the Board, pursuant to authority conferred upon it by an act of Congress, approved July 5, 1935, (49

Stat. 449, 29 U. S. C. A. Sec. 151 *et seq.*), known as the National Labor Relations Act, issued its complaint against said Consolidated Edison Company of New York, Inc., and its Affiliated Companies, hereinafter collectively referred to as the "Companies", alleging that said companies were engaging in and had engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which complaint, together with a notice of hearing thereof, was served upon said Companies, upon the United Electrical and Radio Workers of America, and upon the International Brotherhood of Electrical Workers, hereinafter referred to as the "I. B. E. W."

2. Thereafter, hearings were held on June 3rd, 10th, 11th, 14th, 15th, 16th, 17th, 23rd and 24th, and July 6th, 1937, before a Trial Examiner duly designated by the Board. The Companies were represented by counsel and participated in the hearing. The I. B. E. W. did not appear at the [fol. 8] hearings. By order of the Board dated September 29th, 1937, the proceeding was transferred to and continued before the Board in accordance with its hearings.

3. On November 10, 1937, the Board, having first considered the matter, and being sufficiently advised in the premises, duly stated its findings of fact and conclusions of law and issued and caused to be served on the said Companies its order to cease and desist and to take affirmative action as follows:

"Upon the basis of the above findings of *of* fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in Interna-

tional Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to joint International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

[fol. 9] d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner disciminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by [fol. 10] reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(2) of the Act, is hereby dismissed without prejudice."

4. Thereafter, pursuant to Section 10(e) of the National Labor Relations Act, the companies filed a petition with this Court, seeking a review of the Board's order. The IBEW and certain locals thereof applied for permission to intervene, which permission was granted. United Elec-

trical & Radio Workers of America, now known as Amalgamated Utility Workers Union, was likewise given permission to intervene and was made a party to the proceeding, said proceedings being listed upon the docket of this Court as "In the Matter of Consolidated Edison Company of New York, Inc. and its Affiliated Companies et al., petitioners, and National Labor Relations Board, respondent," "In the Matter of International Brotherhood of Electrical Workers, Local Union #B-825, et al., Petitioners, against National Labor Relations Board, Respondent."

5. The National Labor Relations Board filed a cross motion to enforce its order.

6. Thereafter, pursuant to Section 10(e) of the National Labor Relations Act, the record of the proceeding before the Board was filed with this Court and said petition duly [fol. 11] came on to be heard.

7. On the 14th day of March, 1938, this Court rendered its opinion approving and enforcing the Board's order.

8. On the 21st day of March, 1938, this Court entered its decree granting the Board's motion for enforcement of its order. Said decree reads as follows:

"Petitions having been filed herein to review and set aside an order of the National Labor Relations Board, and said Board having filed a request for the enforcement of said order, issued on November 10, 1937;

"Upon consideration thereof it is hereby

"Ordered by this Court that the petitions to review and set aside the order of the National Labor Relations Board be and hereby are denied and dismissed;

"And it is further

"Ordered that the said order of the National Labor Relations Board be enforced in full and that the petitioners, Consolidated Edison Company of New York, Inc., et al., abide by and perform each and all of the directions contained in said order."

9. On January 21st, 1939, the mandate of the Supreme Court of the United States having been received by this Court, this Court entered the following order:

"The above entitled cases having been taken to the Supreme Court of the United States by Writ of Certiorari;

And the mandate of said Supreme Court having been received modifying, and as so modified, affirming the decision of this court;

Upon consideration thereof it is ordered that said mandate be filed.

It is further ordered that the decree of this court be modified by providing that paragraph 1-F be stricken from the order of the National Labor Relations Board and that the notice called for by paragraph 2-C of the said order of the Board shall not include the provisions of paragraph 1-F. As so modified the decree of this court entered on March 21, 1938 is hereby affirmed."

[fol. 12] 10. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(c) and 1(g) of the aforesaid order of the National Labor Relations Board by permitting organizers and collectors of the I. B. E. W. to enter their properties and engage in union activities among their employees, while at the same time refusing similar privileges to organizers and collectors of the Amalgamated Utility Workers. Said violations of this Court's orders appear more particularly in the annexed affidavits of Arthur C. Joy, Richard Wallace, Harold J. Straub, William A. Fogarty, Thomas Creighton and Peter C. Murphy.

11. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(c), 1(e), 1(g) and 1(h) of the aforesaid order of the National Labor Relations Board by urging, persuading, warning and coercing their employees into joining the I. B. E. W. and threatening them with discharge if they failed to join the said I. B. E. W. They have gone so far in their interference with the self-organization of their employees as to require certain employees to become organizers and shop stewards of the I. B. E. W. Said violations of this Court's orders appear more particularly in the annexed affidavits of William A. Fogarty, Richard Wallace, Charles Robert, Edward Enos, Otto Weiss, Robert Barrett, Thomas Creighton, Peter C. Murphy, Harold J. Straub, Herbert Shingler, John B. Roth and Aaron Datz.

[fol. 13] 12. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(c), 1(g) and 1(h) of the aforesaid order of the National Labor Relations Board by urging, persuading, warning and coercing their employees into paying dues to the I. B. E. W.; urging persuading, warning and coercing their employees into signing check-off agreements of the I. B. E. W.; collecting said dues for the I. B. E. W. through supervisory employees; and otherwise giving assistance to the I. B. E. W. Said violations of this Court's orders appear more particularly in the annexed affidavits of Sarah Oppenheim, Ricker McConnell, Paul Schuler, Edward Enos, Cleveland C. Edwards, Robert Barrett and William Koeppel.

13. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(a), 1(b), 1(c) and 1(h) of the aforesaid order of the National Labor Relations Board by permitting their employees, supervisory and otherwise to be active in behalf of the I. B. E. W. and forbidding any union activity on the part of their employees who are members of the Amalgamated Utility Workers.

Such activities have included the distribution of I. B. E. W. membership cards, application cards and buttons; the collection of dues; the solicitation of union membership, the signing of check-off agreements.

These practices of the I. B. E. W. are so flagrantly carried on during working hours and upon company property [fol. 14] that the company cannot disclaim knowledge of them. It appears further that much of this activity was carried on in the presence of company supervisory officials and through their connivance.

Said violations of this Court's orders appear more particularly in the annexed affidavits of Paul Schuler, Arthur C. Joy, John B. Roth, Sarah Oppenheim, Edward Enos, Roger K. Larkin, Otto Weiss, Robert Barrett, Thomas Creighton, Richard Wallace, William A. Fogarty, Julius A. Greulich, Franklin E. DeLude, Harold J. Straub, and Aaron Datz.

14. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(g) and 1(h) of the aforesaid order of the National Labor Relations Board by discriminatorily transferring Richard Wallace and John Langan from the Hell Gate Generating plant to the Long Island City plant because of their union activities. Said violations of this Court's orders appear more particularly in the annexed affidavits of Richard Wallace, John Langan, Dennis Doris and Franklin E. DeLude.

15. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(g) and 1(h) of the aforesaid order of the National Labor Relations Board by permitting their employees, supervisory and otherwise who constitute grievance committees of the I. B. E. W. to meet with the company [fol. 15] for the purpose of discussing grievances, and by refusing to discuss grievances or deal with their employees who constitute grievance committees of the Amalgamated Utility Workers.

Superintendents and other supervisory officials of the Company have openly admitted that their orders from the Companies were to meet only with I. B. E. W. grievance committees, and have attempted to persuade Amalgamated Utility Workers grievance committees of their employees of the merits of "individual bargaining" in preference to grievance committees.

Said violations of this Court's orders appear more particularly in the annexed affidavits of Philip Clark, Julius A. Greulich, Herbert Shingler, Arthur C. Joy, Herbert Rowson, James Gentile, Leon Farol, Raymond Carroll and Cleveland Edwards.

16. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(h) and 1(g) of the National Labor Relations Board by recognizing and bargaining exclusively with the I. B. E. W. as the collective bargaining agent of

all the Companies' employees, notwithstanding that the I. B. E. W. has not been certified as the exclusive collective bargaining agent of all the employees in accordance with the provisions of the National Labor Relations Act. Said violations of this Court's orders appear more particularly in the annexed affidavits of Arthur C. Joy and Harold J. Straub.

17. That said companies have failed and refused to obey [fol. 16] the aforesaid orders of this Court and continue to refuse to obey said orders in that they have violated sections 1(b), 1(h) and 1(g) of the Board's order by negotiating and bargaining collectively with the I. B. E. W. and discriminating and extending privileges in favor of the I. B. E. W. while at the same time refusing to negotiate and bargain collectively with, or to extend like privileges to the Amalgamated Utility Workers. Said violations of this Court's orders appear more particularly in the annexed affidavits of Arthur C. Joy, James Gentile, Cleveland C. Edwards and Franklin E. DeLude.

18. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(c) and 1(h) of the Board's order by using espionage to secure information concerning the union activities of their employees who are members of Amalgamated Utility Workers. Said violations of this Court's orders appear more particularly in the annexed affidavit of Richard Wallace.

19. The said Companies have wilfully, deliberately and maliciously failed and refused to obey the aforesaid orders of this Court and are continuing to refuse to obey said orders in that they have violated and are continuing to violate sections 1(b), 1(h) and 2(c) of the Board's order by inadequately posting notices to their employees to the effect that they will cease and desist from interfering with the self-organization of their employees. Said violations of this Court's orders appear more particularly in the annexed affidavits of Richard Wallace, Russel Prime and [fol. 17] William Koeppel.

By reason of the aforesaid continued and persistent violations of the orders of this Court by the Companies, the

rights of the Amalgamated Utility Workers Union, and of its members, guaranteed under the National Labor Relations Act, and as provided in said orders of this Court, have been and are being seriously interfered with and irreparably injured.

That by reason of the aforesaid continued and persistent violations of the order of this Court by the Companies, the aforesaid conduct is contumacious and in contempt of this Court.

Wherefore, Amalgamated Utility Workers, etc. moves (a) that said Consolidated Edison Company of New York, Inc. and its Affiliated Companies, and their respective officers, directors and agents be adjudged in contempt of this Court for having failed to comply with its decree dated March 21st, 1938, as amended by its decree dated January 21, 1939, as hereinabove alleged; (b) that thereafter this Court take such action as shall appear just, reasonable and necessary to make effective the order of the National Labor Relations Board, as ordered to be enforced by this Court, and grant such other and further relief as the nature of this case may require.

Dated: New York, May 10th, 1939.

Amalgamated Utility Workers, by Arthur C. Joy, General Secretary.

[fol. 18] *Duly sworn to by Arthur C. Joy. Jurat omitted in printing.*

[fol. 19] In United States Circuit Court of Appeals
Second Circuit

Memorandum Opinion—Filed June 2, 1939

Motion denied on ground that moving party has no standing to press a charge of civil contempt, if contempt had been committed. Under the National Labor Relations Act the Board is the proper party to apply to the court for an order of enforcement and to present to the court charges that the court's order has not been obeyed.

June 2, 1939.

T. W. S., A. N. H., R. P. P., C. JJ.

[fol. 20] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

ANSWER OF THE COMPANIES TO THE MOTION OF AMALGAMATED UTILITY WORKERS—Filed May 23, 1939

Answering the motion and petition of Amalgamated Utility Workers affiliated with the Utility Workers Organizing Committee, C. I. O., dated May 10, 1939, but reserving all objections to the assumed right of the Amalgamated Utility Workers to maintain this contempt proceeding and to the assumption of jurisdiction by this Court over the proceeding instituted and prosecuted by the Amalgamated Utility Workers, the Consolidated Edison Company of New York, Inc., and its affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electrical Subway Company (hereinafter referred to as "the Companies"), [fol. 21] by their attorneys, Whitman, Ransom, Coulson and Goetz, respectfully allege and show, upon information and belief, as follows:

I. Referring to Paragraphs "1" to "9", both inclusive, of the motion, the Companies admit that certain proceedings were had by and before the National Labor Relations Board, and in this Court, and in the Supreme Court of the United States, during the years 1937 and 1938, and in January of 1939, which eventuated in the modifying decree entered by this Court on January 21, 1939, to which this motion relates. Inasmuch as the full transcript and record of those proceedings are a part of the records of this Court in the review proceedings in which the pending motion is entitled and brought, the Companies ask leave to refer to those records for an accurate and complete statement of the matters and things referred to in Paragraphs "1" to "9", both inclusive, of the motion; and ask leave to refer also to the Opinion filed by the Supreme Court of the United States on December 5, 1938 (305 U. S. 197) to which Opinion the motion herein makes no reference. From the information contained in such transcript and record, the Companies particularly deny the allegation of Paragraph "4" of the motion that in the above-entitled review proceedings in this Court as to the

Order of the National Labor Relations Board dated November 10, 1937, the I. B. E. W. and certain Locals thereof applied for permission to intervene, which permission was granted. From such information, the Companies allege that the I. B. E. W. and the Local Unions thereof constituting employees of the Companies instituted and conducted their own proceedings as an aggrieved party pursuant to Section 10(f) of the National Labor Relations Act, and at all times appeared and acted as petitioners as of right in the review proceedings so instituted, in which the pending motion is in part entitled and brought. Upon the basis of such information, the Companies allege further that the Amalgamated Utility Workers, its predecessor organization, and the Congress of Industrial Organizations, were not permitted to take part in the hearings before the National Labor Relations Board, but that upon the hearing and argument of the review proceedings in this Court, the United Electrical and Radio Workers of America, now stated in the motion to be known as Amalgamated Utility Workers Union, asked and was given permission to intervene, not as a party respondent, but for the sole purpose of arguing and filing a brief in its behalf (R. 1735), by reason of which the counsel for such organization was heard also in the Supreme Court of the United States.

II. Concerning Paragraphs "10" to "19", both inclusive, of the motion, the Companies deny each and every allegation thereof that they, or any of them, have been guilty of [fol. 22] any wilful, deliberate, intentional or malicious violation, or any violation, of the modifying decree entered by this Court on January 21, 1939, or of the Order of the National Labor Relations Board as modified and interpreted by the Opinion and Mandate of the Supreme Court of the United States. The Companies aver that ever since the entry by this Court of its Order of January 21, 1939, they have complied, and have intended to comply, in good faith, with such Order of this Court and with the Order of the National Labor Relations Board as so modified and granted enforcement, and were in fact complying with the Board's Order (as so modified) before the decree of January 21, 1939, was entered. The Companies reply further to specific paragraphs and allegations of the motion:

III. The Companies deny each and every allegation of Paragraph "10" of the motion. Except to the limited and

lawful extent to which officers and agents of the I. B. E. W. have been permitted on Company premises solely for the carrying out of duties in relation to the work of the Grievance Committees constituted under the valid and existing Contracts between the Companies and the I. B. E. W. and for collective bargaining conferences with the Management under the Contracts, the Companies have at no time since January 21, 1939, deliberately or wilfully or knowingly permitted representatives of the I. B. E. W. or any other labor organization to engage in union activities on Company premises. Organizing activities and the collection of dues on Company premises have not been wilfully or knowingly permitted to take place. The existing Contracts between the Companies and the I. B. E. W. contain a provision by which the I. B. E. W. "agrees not to solicit membership on Edison Company time or property" (Article II). The Companies have endeavored in good faith to enforce the above-stated regulations against all officers, agents and representatives of the I. B. E. W. (aside from the collective bargaining representatives and the operation of the Grievance Committees under the Contracts), and endeavored impartially to enforce like restrictions against officers, agents and representatives of the Amalgamated Utility Workers. The above allegations are specifically related to the period since the entry of the Order of this Court on January 21, 1939, but they could be made also as to a long period prior thereto. If prior to the entry of this Court's Order of January 21, 1939, and the posting of the required notices, some members of the I. B. E. W. and some members of the Amalgamated Utility Workers, who are employees of the Companies, have at times engaged in discussions and union activities among their fellow employees on Company property, such activities have been and are contrary to the announced policy of the Management and in spite of reasonable efforts by the Manage-
[fol. 23] ment in good faith to prohibit the same; but as a practical matter it has not been feasible to prevent all discussion and activities in union matters on Company premises, on the part of employees who are members of either labor organization. If the Order of the Board were construed to require the Management to suppress all such discussion and activity at all hazards, the Order as so construed would not only deny the constitutional rights of workers as citizens, but would compel the Management excessively to police the activities of their employees in labor organization

matters. The Companies allege that since January 21, 1939, and theretofore, the representatives and members of the complaining labor organization have been the more conspicuous and flagrant offenders against an impartial curtailment of union activities on Company property. The facts as to the matters alleged in Paragraph "10" of the motion and the affidavits annexed thereto are more fully stated in the accompanying affidavits of Floyd L. Carlisle, Patrick McGrath, James D. Spence, Joseph Clement, Walter Holler, Raymond J. Foster, Ernest B. Marshall, and other affidavits submitted by the Companies.

IV. The Companies deny each and every allegation of Paragraph "11" of the motion, and particularly deny that at any time since the entry of this Court's Order of January 21, 1939, the Companies have urged, persuaded, warned or coerced their employees into joining the I. B. E. W. or have threatened any of them with discharge if they failed to join the I. B. E. W. The Companies further deny that in any instance have their employees been required or directed to become organizers or shop stewards of the I. B. E. W. The facts as to the allegations of Paragraph "11" of the motion and its supporting affidavits are more fully shown in the accompanying affidavits of Alfred J. Wheeler, Jr., Harry Bulock, Marion Little, Ernest B. Marshall, Walter Holler, Raymond J. Foster, J. J. McNamara, William Pachler, John F. Ronan, Walter Donovan, John J. McCarron, Ernest Wesler, Edwin Griffiths, James J. Butler, Ladislav Fencl, and other affidavits submitted by the Companies.

V. The Companies deny each and every allegation of Paragraph "12" of the motion, and particularly deny that at any time since the entry of this Court's Order of January 21, 1939, the Companies have urged, persuaded, warned or coerced any of their employees into paying dues to the I. B. E. W. or into signing check-off agreements or other authorizations in behalf of the I. B. E. W., and deny further that with the approval or knowledge of the Companies any dues for the I. B. E. W. have been collected through supervisory employees. The facts as to the matters alleged in Paragraph "12" of the motion and the affidavits annexed to the same are more fully shown in the accompanying affidavits of J. J. Wittmer, John J. McCar-

[fol. 24] ron, Ernest Wesler, Edwin Griffiths, and other affidavits submitted by the Companies.

VI. The Companies deny each and every allegation of Paragraph "13" of the motion, and particularly deny that at any time since the entry of this Court's Order of January 21, 1939, to the knowledge of the Companies any of their employees have been permitted to be active in behalf of the I. B. E. W. in any of the respects alleged (except to the limited and proper extent stated in Paragraph III hereof), and deny further that union activities on the part of employees who are members of the Amalgamated Utility Workers have been forbidden or restricted to the knowledge of Management except to the proper and limited extent stated in Paragraph III hereof and the affidavits referred to therein. The facts as to the matters and things alleged in Paragraph "13" of the motion and the affidavits annexed thereto are more fully stated in the accompanying affidavits of Floyd L. Carlisle, J. J. Wittmer, Harry Y. Hall, Harry Arffmann, Edward Lemmer, Marion Little, Ernest B. Marshall, Walter Holler, Raymond J. Foster, Walter Donovan, John J. McCarron, Ernest Wesler, Edwin Griffiths, James J. Butler, Ladislav Fencl, Henry A. Maldacker, Sylvester Bundock, and other affidavits submitted by the Companies.

VII. The Companies deny each and every allegation of Paragraph "14" of the motion, and particularly deny that the transfer of Richard Wallace and John Langan from the Hell Gate Generating Plant to the Long Island City Generating Plant, the operation of which had but recently been taken over from the Pennsylvania and Long Island Railroads, was in any manner because of or related to any alleged union activities on the part of either Richard Wallace or John Langan. The Companies allege that such transfers were made in the normal course of operations; were made solely for operating reasons in the proper conduct of the business of the Companies; were stated in advance to such employees to be altogether temporary in character and for such operating reasons; and that upon the completion of the work for which such employees were temporarily transferred to the Long Island City Plant, both Richard Wallace and John Langan were returned to the Hell Gate Generating Plant, as they had been informed in advance would be done. The facts as to the matters alleged

in Paragraph "14" of the motion and the affidavits annexed thereto are more fully shown in the accompanying affidavit of Edward C. M. Stahl.

VIII. The Companies deny that any of them has wilfully, deliberately or maliciously failed or refused, and deny that any of them has failed or refused, to obey any Order of [fol. 25] this Court, or that they are continuing to refuse to obey any Order of this Court or any part of any Order of the National Labor Relations Board as modified and interpreted by the Supreme Court, with respect to any of the matters and things alleged in Paragraph "15" of the motion herein. The Companies aver that they have complied in good faith with Section 9(a) of the National Labor Relations Act, and find nothing in the Board's Order as modified which requires any action or inaction on their part contrary to Section 9(a) of the Act. Each of the Companies has a subsisting Contract with the I. B. E. W. and a Local Union thereof constituting a substantial majority of its eligible employees. Such I. B. E. W. majority has recently been ascertained by a detailed count and check. The validity of such Contracts and their continuance in force have been adjudicated and upheld by the Supreme Court of the United States in the review proceedings in which the pending motion is entitled and instituted. Those Contracts provide, among other things, for the creation and functioning of Grievance Committees, pursuant to which whatever grievances may arise between individual employees who are members of the I. B. E. W. are taken up by that labor organization and adjusted with the Management, in the interests of a fair and amicable settlement without endangering the continuity of work and the rendering of service. As approximately 65 per cent of the eligible employees of the Companies have selected and designated the I. B. E. W. as their representative for collective bargaining and for the adjustment of individual grievances through Grievance Committees of the I. B. E. W., the Companies have dealt with such Grievance Committees pursuant to the Contracts and are continuing to do so. For the reason that the Companies have been advised that the duty imposed by law to bargain collectively and deal with the labor organization selected and designated by a majority of the employees "imposes a negative duty to deal with no other labor organization", and as the Amalgamated Utility

Workers has made no showing that it has even a substantial number of employees of the Companies as members of its labor organization, the Companies have in good faith refused to bargain or deal with representatives or committees claimed to have been constituted by the Amalgamated Utility Workers. At the same time, the Companies have at all times made it clear in writing, to members of the Amalgamated Utility Workers, as the principal moving affidavit by Mr. Joy shows, and to all other employees as well, that it has been and is the policy of the Companies to permit individual employees and suitable groups of individual employees to present and discuss any grievances freely with Management. To the best of the knowledge of the management of the Companies, there has been no instance in which any employees of the Companies, either singly or in suitable groups, have been denied the oppor- [fol. 26] tunity of presenting their grievances freely to Management. The facts as to the conformance of the Companies in good faith with the requirements of Section 9(a) of the National Labor Relations Act, by which the collective bargaining representatives selected by a majority of the employees are stated to become and be the exclusive bargaining agency for all of the employees so far as collective bargaining and representation are concerned, are more fully set out in the accompanying affidavits of Floyd L. Carlisle, J. J. Wittmer, Franklin E. Vilas, and other affidavits submitted by the Companies.

IX. The Companies deny the allegations of Paragraph "16" of the motion that they have failed and refused to obey the Order of this Court and are continuing to refuse to obey the Order of this Court, and deny that they have violated and are continuing to violate the Order of the National Labor Relations Board as modified by the Supreme Court and by the final decree of this Court. The Companies allege that, taking into account the ascertained fact that substantially 65 per cent of their employees have freely become members of the I B E W and have selected the I B E W as their representative for collective bargaining with the Management, the Companies have complied in good faith with the provisions of Section 9(a) of the National Labor Relations Act, according to its plain language and according to its interpretation by the Supreme Court of the United States, and have complied in good faith with the provisions of Section 1(g), and all other provisions, of the Order of the

National Labor Relations Board, as such Section 1(g) and other provisions of such Order were interpreted by the Supreme Court of the United States. The facts as to the matters alleged in Paragraph "16" of the motion and the affidavits annexed thereto are more fully stated in the accompanying affidavits of Floyd L. Carlisle and J. J. Wittmer.

X. For the reasons and under the circumstances stated in Paragraphs III, VIII and IX above and the affidavits accompanying the same, the Companies deny each and every allegation of Paragraph "17" of the motion.

XI. The Companies deny each and every allegation of Paragraph "18" of the motion, and particularly deny that at any time since the entry of this Court's Order of January 21, 1939, or during the years 1937, 1938 or 1939, they have violated Sections 1(e) and 1(h) of the Board's Order by using detectives or espionage to secure information concerning any union activities of any employees who were members of Amalgamated Utility Workers or of any other labor organization. The facts as to the allegations of Paragraph "18" of the motion and the annexed affidavit are stated in the accompanying affidavits of Floyd L. Carlisle and Alfred J. Wheeler, Jr.

[fol. 27] XII. The Companies deny each and every allegation of Paragraph "19" of the motion, and particularly deny that they failed in any manner or to any substantial extent to post and to keep posted, according to the requirements of the Order of the National Labor Relations Board and the Order of this Court of January 21, 1939, the notices required by the Board's Order. The Companies allege that their compliance with the Board's Order in this respect was under the administrative supervision of the National Labor Relations Board acting by and through its Regional Director, and that as a result of an extensive examination and check by a representative of the Regional Director, who visited the Companies' premises and observed the notices in place, the Regional Director reported to the Companies in writing her confirmation of their compliance with the Board's Order as to the posting of notices, all as more fully appears from the accompanying affidavits of Floyd L. Carlisle and Charles H. Wood.

XIII. The Companies deny that they have violated in any respect the Order of this Court or the Order of the National

Labor Relations Board as modified. The Companies deny that they have violated any rights of the Amalgamated Utility Workers or its members under the provisions of the National Labor Relations Act. The Companies deny that by reason of any violations of the Order of this Court or the Order of the National Labor Relations Board, any rights of the Amalgamated Utility Workers Union, or of its members, under the National Labor Relations Act or under any Order of this Court, have been and are being seriously interfered with or have been or are being irreparably injured. The Companies deny that the complaining labor organization has suffered any damage or loss by reason of any acts of the Companies contrary to law or in violation of the Order of this Court or the Order of the National Labor Relations Board as modified. The Companies deny that, by reason of any violations of any Order of this Court, any of the Companies has been guilty of any contumacious conduct and is in contempt of this Court.

And for a separate and distinct defense and as grounds for denying the motion and dismissing the proceeding, the Companies allege, upon information and belief:

XIV. That at all the times referred to in the motion and the accompanying affidavit, a large majority of the eligible employees of each of the Companies have been and are members of the I B E W, and that at all times since January 21, 1939, approximately 65 per cent of the eligible employees of the Companies have been and are members of the I B E W, with dues fully paid. That this majority membership of the I B E W among the employees has lately been verified by a detailed check and count.

[fol. 28] XV. That a large majority of the employees of the Companies have selected and designated the I B E W as their representatives for the purposes of collective bargaining, and have caused Contracts to be made and continued in force between the I B E W and their Local Unions and the Companies. The validity of such Contracts has been upheld by the Supreme Court of the United States (305 U. S. 197), and such Contracts are in full force and effect. Concerning present sub-division (f) (former sub-division (g)) of the Board's order, the Supreme Court stated:

"We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an

exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law."

No exclusive bargaining agency other than the I B E W has been established by the Companies' employees pursuant to the provisions of the Act, and the selection of the I B E W by a substantial majority as its representative for the purpose of collective bargaining has been continued in force by such majority.

XVI. Section 9(a) of the National Labor Relations Act provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

For further separate and distinct defenses, the above-named Companies severally allege, upon information and belief, the following grounds of objection to the motion and the jurisdiction:

XVII. That the Amalgamated Utility Workers has no standing, under the National Labor Relations Act or otherwise, to institute and maintain the proceeding and motion as set forth in the notice of motion and petition of the Amalgamated Utility Workers.

XVIII. That the National Labor Relations Act does not authorize or permit a labor organization to institute and maintain such a motion and proceeding before this Court.

XIX. That the Amalgamated Utility Workers has not shown itself to be, and is not, a "person aggrieved", within the meaning of Section 10 of the National Labor Relations Act, as to the right of resort to this Court.

[fol. 29] XX. That the motion papers fail to show whether the motion and the proceeding are prosecuted by the Amal-

gamated Utility Workers as in the nature of a civil contempt or a criminal contempt; that the facts alleged in the motion papers and accompanying affidavits do not state and support a charge of either a civil contempt or a criminal contempt, against the employers named; and that neither the motion nor the accompanying affidavits show or allege facts which would establish that any damages were suffered by the complaining labor organization, so as to support a finding of civil contempt.

XXI. That the matters and things stated in the motion and accompanying affidavits are not of judicial cognizance upon the facts alleged and at this time.

XXII. That the motion is in disregard of the Opinion of the Supreme Court of the United States on December 5, 1938, in the review proceedings in which the motion is entitled and brought, which Opinion interpreted the parts of the Order of the National Labor Relations Board on which the motion relies; and that the motion is in effect to secure an enlargement and modification of the Order of the National Labor Relations Board and the final Decree of this Court and by implication and inference to expand the scope and operation of the Order and Decree beyond the fair meaning of what was intended to be prohibited in the light of the issues, so as to make the Board's Order as modified apply to and determine and prohibit matters not litigated, determined and prohibited by such Order and Decree.

XXIII. That if the parts of the Board's Order relied on supporting the motion are now to be construed as meaning what the motion says they mean, rather than what the Supreme Court of the United States said they mean, such parts of the Board's Order are so indefinite and uncertain in meaning and effect that no finding of violations and of a civil or criminal contempt could be predicated thereon.

XXIV. That inasmuch as the Amalgamated's motion was brought without legal right, the "response" thereto and "suggestion" by counsel for the National Labor Relations Board are unauthorized by Section 10 of the National Labor Relations Act and cannot operate to save or sanction a motion which a labor organization cannot institute or maintain under the National Labor Relations Act.

XXV. That the attitude and action of the Companies, as stated in the letter to John McCurley dated February 27,

1939, on which the motion appears principally to be based, show that the Companies have in good faith complied with Section 9(a) of the National Labor Relations Act and with the Order of this Court and the Order of the National Labor Relations Board as modified and interpreted by the Supreme Court of the United States.

[fol. 30] XXVI. That the facts stated in the motion and accompanying affidavits are insufficient to show or constitute a violation of the modifying Decree entered by this Court on January 21, 1939, granting enforcement of the Order of the National Labor Relations Board entered November 10, 1937, as modified and interpreted by the Opinion of the Supreme Court of the United States on December 5, 1938.

XXVII. That if the motion rests or relies at all upon matters not shown by the record in this Court and the subsequent correspondence of the parties, which present questions of law concerning which the Companies have acted in good faith, the motion to that extent rests upon hearsay statements which are contrary to the known facts and in any event can have no probative force in a contempt proceeding.

Wherefore, the above-named Companies severally ask that the motion of the Amalgamated Utility Workers be denied and that the proceeding instituted by it be in all respects dismissed, with costs and disbursements.

Dated, May 22, 1939.

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, by F. L. Carlisle, Chairman of the Board of Consolidated Edison Company of New York, Inc., et al.; Whitman, Ransom, Coulson and Goetz, by William L. Ransom, Solicitors for the Consolidated Edison Company of New York, Inc., et al., No. 40 Wall Street, New York City; William L. Ransom, Henry S. Reeder, P. M. Berkson, of Counsel.

[fol. 31] *Duly sworn to by F. L. Carlisle, jurat omitted in printing.*

[fol. 31½] [File endorsement omitted.]

[fol. 32] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

AFFIDAVIT OF FLOYD L. CARLISLE—IN OPPOSITION—Filed May 23, 1939

STATE OF NEW YORK,
County of New York, ss:

Floyd L. Carlisle, being duly sworn, deposes and says:

I am, and at all of the times mentioned in the motion and accompanying affidavits I have been, the Chairman of the Board of Trustees of the Consolidated Edison Company of New York, Inc. I am Chairman of the Board of Directors also of the Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company and The Yonkers Electric Light and Power Company, and a member of the Board of Directors of New York Steam Corporation and the Consolidated Telegraph and Electrical Subway Company. For purposes of collective bargaining and questions arising under the National Labor Relations Act, the above-named Companies on one hand and their employees on the other have been treated as a unit by the National Labor Relations Board and by this Court and the Supreme Court of the United States; and I shall usually refer to these seven employers as "the Companies".

I have read the motion of the Amalgamated Utility Workers, the principal accompanying affidavits by A. C. Joy, General Secretary of the Amalgamated Utility Workers, and Harold J. Straub, General Organizing Director of the same organization, and the incidental affidavits by other members of that organization. By the action of the Boards of the respective Companies, I have had general charge and supervision, for the management, of matters pertaining to collective bargaining, and have acted in that capacity after frequent consultations with the directors and officers of the Companies. From my familiarity with the proceedings had by and before the National Labor Relations Board and in the Courts, and from my close contact with the policy and actions of the Companies as to collective bargaining, I believe that I have known the [fol. 33] policy and the action of the Companies, and have

been and am in possession of the facts, as to the matters alleged in the motion and supporting affidavits.

In answer to those allegations, I respectfully state herein the facts according to the best of my knowledge, information and belief; and where allegations are made as to things claimed to have been said or done by persons other than myself, the affidavits of those persons have been obtained, and are submitted, to such extent as such affidavits were obtainable by or in behalf of the Companies, in the time available.

To a large extent, the principal contentions of the motion and supporting affidavits are based upon substantially accurate copies of letters written by me or by other officers or representatives of the Companies to officers or agents of the Amalgamated (see Exhibits "B" and "F", attached to first moving affidavit, by Arthur C. Joy). My letter of February 27, 1939, to John McCurley, President of the Amalgamated Utility Workers, and A. A. Low's letter of March 6, 1939, to Harold J. Straub, General Organizing Director of the Amalgamated Utility Workers, stated the policy and action of the Companies as to the major matters dealt with in the moving affidavits. The correspondence annexed to Mr. Joy's affidavit presents the basis for the principal contention which is now advanced that the Companies have violated and knowingly disregarded and disobeyed the provisions of the Order of the National Labor Relations Board as modified and interpreted by the Opinion of the Supreme Court of the United States, and the final Decree entered by this Court on January 21, 1939, affecting the claimed collective bargaining rights of the Amalgamated Utility Workers.

At no time did Messrs. Joy or Straub, or anyone else connected with the Amalgamated or the C I O, bring to my attention any of the matters now complained of in the motion, aside from the matters which were presented and replied to in the correspondence above referred to, on which the principal affidavit for the Amalgamated is based. In my letter of February 27, 1939, to President McCurley of the Amalgamated, I stated, as I had from time to time announced previously, that——

"If any violation of the Board's Order or of the National Labor Relations Act comes to our attention, we shall deal with it promptly and adequately."

First I wish to deny categorically and emphatically that the Companies have deliberately or knowingly violated the Order of this Court or the Order of the Board as granted enforcement in modified form. I do not believe that these Orders have been violated or disregarded by the Companies in any respect. Despite the controversies which at times have raged between the rival labor organizations among our employees, and despite the things which [fol. 34] have at times been done by employees who are members of the Amalgamated Utility Workers (herein usually referred to as "the Amalgamated" or "the C I O") or of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (herein usually referred to as "the I B E W"), I do not believe that anything has been done by the Companies which violates the Order entered by this Court on January 21, 1939. Our intention and policy have been and are to comply fully with the Order and with the National Labor Relations Act.

I. Membership of Employees in Labor Organizations

1. These Companies are engaged in the supplying of electric, gas and steam service, in a large part of New York City and in Westchester County. Continuity, safety and adequacy in their service are essential to the public. As of March, 1939, they had 37,059 employees, of whom some 1,820 were not eligible for membership in labor organizations, because of the nature of their supervisory duties. Of the 35,239 eligible employees, some are members of the I B E W, some are members of the Amalgamated, and some are members of no labor organization.

2. Of the eligible employees, some 22,892, or about 64.9 per cent, are members of the I B E W in good standing, with dues fully paid, and have selected the I B E W as their representative for the purposes of collective bargaining. This membership of the I B E W among our employees was ascertained and verified through a detailed check and count, made in February and March of 1939, in the manner which I shall describe. At the time covered by the proofs before the National Labor Relations Board and the Supreme Court (viz., in June of 1937), the I B E W was shown to have 60 per cent of the employees with dues paid up; in March of 1939, the percentage was shown by the verified records to be 64.9 per cent.

3. The membership of the C I O among our employees has not been stated or disclosed, but I believe that the greater part of our employees who are not members of the I B E W are members of no Union. The moving papers show that the C I O has been invited by me to submit a statement or proof of its membership (see Exhibit "B" attached to affidavit of Arthur C. Joy). This has never been done.

4. In dealing with the claims of the rival labor organizations among our employees, I have kept in mind, and have been advised concerning the effects of, Section 9 (a) of the National Labor Relations Act, which provides:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to [fol. 35] rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

In the moving papers on this motion, I find no statement of C I O membership and no facts which are claimed to show or indicate a C I O majority.

II. The Collective Bargaining Contracts in Force Between the I B E W and the Companies

5. At all times since May and June of 1937, the Companies have had in force collective bargaining agreements with the I B E W and the seven Local Unions which comprise a substantial majority of the employees of each Company. These Contracts provide, among other things, for the adjustment of all grievances and disputes through Grievance Committees and through the National organization of the I B E W, with resort to arbitration if need be, in lieu of strikes or lock-outs for any cause; for the continuance of old age, sickness, disability and retirement benefits; for vacation and hours-of-work schedules, a five per cent increase in pay, etc. The advantages of such Contracts to the public, the employees, and the Companies, are obvious, and have been commented on by the Supreme

Court. A copy of one of these Contracts (with I B E W Local B-829) is hereto annexed as Exhibit "A".

6. The validity of these Contracts was adjudicated by the Supreme Court of the United States (305 U. S. 197), and the Board's Order was accordingly modified by this Court so as to take out the clause which would have disestablished or invalidated these Contracts.

7. By the action of the Local Unions comprising a substantial majority of the employees of the Companies, these Contracts have been continued in full force and effect.

III. Compliance with the Order of the Board as Modified and Granted Enforcement

8. The Order of the National Labor Relations Board, as modified by the Supreme Court (305 U. S. 197) became effective on the entry of the final decree by this Court on January 21, 1939. This Court had by an Order entered on March 21, 1938, stayed the taking effect of its enforcement Order and the Board's Order, pending application by the Companies and by the I B E W for certiorari to the Supreme Court. When the petitions for certiorari were granted, the Companies and the I B E W complied with Rule XXIX, sub-division 3, of the Rules of this Court; and thereby the stay was continued "until the final disposition of the case by the Supreme Court." The decision and Opinion of the Supreme Court in the review proceedings as to this Court's decree of enforcement of the Board's Order of November 10, 1937, was filed on December 5, [fol. 36] 1938. I announced immediately our intention to comply in good faith. The Companies immediately sent a copy of the Opinions, in full, to each of their employees. When the Mandate of the Supreme Court was issued and received, the final and modifying Decree of enforcement was entered by this Court on January 21, 1939. Fully a month before that time, the Companies had shown the good faith of their intended compliance, by doing, at the suggestion of the Regional Director and before the Mandate of the Supreme Court was issued, various acts and things which would be required by the Order when entered.

9. The details of this compliance before the entry of the Order of January 21, 1939, were shown in the preliminary

notification sent to the Regional Director on February 1, 1939, of which a copy is hereto annexed as Exhibit "B". When the notices required by the Order had been duly posted, a notification of the completion of compliance was on that day sent to the Regional Director, on February 20, 1939. A copy is hereto annexed as Exhibit "C".

10. On February 20, 1939, the Companies posted on their numerous bulletin boards throughout their properties two notices to their employees, and the same were kept posted during more than the thirty days required by the Order. Copies of each of these notices, one containing formally and in full the Board's Order as modified and the other advising the employees that the Companies intended to continue to comply with the Order as modified, etc., are hereto annexed as Exhibits "D" and "E", respectively.

11. In the affidavits of Richard Wallace, William Koeppel, and Russell Prime, submitted in support of the motion, it is alleged that in several instances the required notices to employees were not posted or kept posted, in several locations where the affiant members of the C. I. O. allege that they should have been. I believe that there were no substantial omissions of the notices from the places required by the Order of the Board, and I am advised and believe that the matter is not one of judicial cognizance at this time, upon motion by the C. I. O. organization. The time within which the notices were required to be kept posted expired on March 22nd. I am advised and believe the matter was under the administrative supervision of the Board, not the C. I. O. I am informed that on March 6, 7, 8, and 9, a representative of the Regional Director of the Board, in conjunction with a representative of the Companies, made an extensive inspection and check of the postings, in view of complaints to the Board by the C. I. O., and that the Board's inspector found and reported a substantial and sufficient compliance with its Order as to the postings. The Board reported no insufficiency of compliance, during the thirty days or afterwards; and the C. I. O. has no standing to predicate now a [fol. 37] charge of contempt, on any such insubstantial grounds. What I believe to be the facts as to the Board's checking and verification of compliance are shown in the accompanying affidavit of Charles H. Woods.

IV. Recent Checking and Verification of the Extent of I. B. E. W. Membership Among the Companies

12. About a month after the entry of this Court's Order of January 21, 1939, the I. B. E. W. complained to the Companies that the I. B. E. W. was not being accorded the status to which it was entitled, under Section 9(a) of the Act and the Opinion of the Supreme Court. The I. B. E. W. offered and asked for a complete check of its membership records and dues data, to ascertain the number and percentage of its paid-up members among the employees of the Companies. This proposal was availed of. Under my instructions, the check and verification were made under the supervision of Dr. J. J. Wittmer, Personnel Director, during March of this year, as shown in the accompanying affidavit by Dr. Wittmer. As reported to me on April 7th and under my general instructions, the work was done in the following thorough manner, stated by Dr. Wittmer:

"The check of membership records was completely made by employees of the Personnel and Payroll Departments of the Consolidated Edison Company under my direction. The I. B. E. W. was represented by Mr. W. F. Steinmiller, International Representative, who was present at all times during the count and who coordinated the activities of the various Local Union officers in the presentation of their records for our examination. All handling and examining of records during the investigation was done by the Consolidated Edison employees who individually and collectively can vouch for the work they did and the manner in which it was performed.

"The records submitted by the I. B. E. W. for certification were:

"(1) The dues ledgers of the individual Local Unions.

"(2) The applications for membership, signed by the individual applicants.

"(3) The official receipt books of the Local Unions.

"These records were inspected in the offices of the various Local Unions. Particular care was taken to insure that all records related to bona fide employees.

"The Company's employee record consisted of an alphabetic list, prepared by the Payroll Statistics Bureau, of the employees of each company showing each employee's pay-

roll control number, name and title, as of February 25, 1939. The verification of the I. B. E. W. members as Company employees was made by comparing the signatures on the I. B. [fol. 38] E. W. membership application with the known signature of our employees as found in the Personnel records of the various companies. The signature files used in most instances were the signed Declaration of Residence form filed by each employee for New York State Income Tax purposes for the year 1938. Where no such form existed, reference was made to the employee's signature as found on his employment application or employee record card. The Company records at all times were in the possession of the Company employees making the check and were returned to the Company's premises every evening. The tax forms were used because of the convenience in carrying this material to and from the union offices during the course of the investigation.

"The actual count was made by inspecting each member's dues account as it appeared in the ledgers of his Local. Where the last month for which dues had been paid was September 1938 or later, he was regarded a member and his signature, as it appeared upon his application for membership, was compared with his signature as it appeared on the Company records. Where a similarity existed between these two signatures, it was accepted as an indication that the I. B. E. W. member was our employee of that name and signature and our payroll list was marked accordingly. In those cases where the signatures obviously were not made by the same individual, the indiviiduals were not counted as members. In those cases where an individual appeared on the dues ledger as a member, but whose name did not appear upon our payroll records, he was not regarded as an employee and was not included in our count. We have, during the course of the investigation, maintained a record of these cases and have this information available should it be required.

"In order to establish the validity of the dues ledger records as representing actual payment of cash dues by the member to his Local Union, we made spot checks by comparing the ledger record of approximately every twenty-fifth member with the Local Union receipts to be sure a receipt had been issued to the member. The second copy of this receipt is sent to the International Office together with a

per capita tax of fifty cents (50¢), by the Local Union, while the third copy, which is the one we inspected, remains permanently in the receipt book.

"In order to answer any question that might arise as to the specific material presented by the I. B. E. W., every Union record which we examined was initialed by the individual making the examination."

13. The results of this detailed checking to determine the number and percentage of employees of the Companies who are paid-up members of the seven Local Unions of the I. B. E. W. were reported to me as follows:

"We found 22,152 employees as members of the I. B. E. W. or 62.8 per cent of the 35,239 eligible employees in the Con- [fol. 39] solidated Edison System, as of the time we made this check. In addition, there are 740 employees, or 2.1 per cent, shown on the I. B. E. W. records as members with dues paid, but whose signatures to I. B. E. W. membership cards we have been unable as yet to verify from our own records. With these included, the total I. B. E. W. membership is 22,892, or 64.9 per cent, of the eligible employees. You will recall that at the time the I. B. E. W. presented its membership figures to us in June of 1937, during the hearings before the N. L. R. B., the percentage of eligible employees with dues paid was stated to then be 60 per cent."

Dr. Wittmer submitted to me the following conclusion, from the checking and verification done under his supervision:

"In my judgment, based upon the examination outlined above, the statement of the I. B. E. W. membership by companies, given in the attached tabulation, clearly shows not only that a majority of the employees of the Consolidated Edison System are members of the I. B. E. W., but also that a majority of the eligible employees of each individual company on the System are such members."

A summary showing the ascertained and verified membership of the I. B. E. W. among our employees, by Companies, is hereto annexed as Exhibit "F".

V. Attitude, Policy and Action of the Companies as to Collective Bargaining Matters and the Status of the Amalgamated (C. I. O.)

14. The policy and action of the Companies as to the matters now principally complained of by them were stated in

my letter of February 27, 1939, to President McCurley of the Amalgamated (see Exhibit "B" attached to moving affidavit of A. C. Joy) and Mr. Low's letter of March 6, 1939, to General Organizing Director Straub (see Exhibit "F" attached to A. C. Joy affidavit); and I stand upon those statements of what we have done. For convenience, a correct copy of my letter to President McCurley is hereto annexed as Exhibit "G", and a copy of Mr. Low's letter is hereto annexed as Exhibit "H".

15. The motion here seems to rely largely, for its claim of violation, upon the provisions of present subdivision (f), former sub-division (g), of the Board's Order. Former sub-division (g) requires the Companies to "cease and desist" from "Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees." I have been advised, and in good faith I believe, that the meaning and effect of this former sub-division (g), now (f), are determined and controlled by the interpretation which the Supreme Court placed upon it, in [fol. 40] leaving this sub-division in the Order. The Court said:

"We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law."

No majority bargaining agency other than the I. B. E. W. has been established under the Act; and I believe that the I. B. E. W. has at all times since June of 1937 been the bargaining agency selected by a large majority of the employees of the Companies. If the Board's Order is now to be construed, as the C. I. O.'s motion contends, so as to require the Companies to disregard and give no effect to Section 9(a) of the Act or the Supreme Court's interpretation, I can only say that I find no such requirement in the Order and that the Companies have endeavored to comply in good faith with the Act and with the Supreme Court's interpretation of the Order. If the Order is now to be modified and broadened, I submit that any such thing should be done, if at all, by modification in appropriate proceed-

ings rather than by a contempt motion as to an Order which lacks clarity, certainty and definiteness of terms.

16. Neither the Board nor its Regional Director has at any time informed or advised the Companies that the latter were not complying with the Order of this Court. No complaint of violation or proceeding based on violation of the Order of this Court has been initiated by the Board and brought to the attention of the Companies. No one connected with the Amalgamated or the C. I. O. has brought to my attention any of the matters now complained of, other than those considered and replied to in the correspondence above referred to, in which I reiterated my purpose that any claimed violations brought to my attention would be dealt with "promptly and adequately."

VI. Summary of the Charges and Grounds of Motion and Summary of Reply Thereto

17. As I read the motion and accompanying affidavits, substantially the following charges are made by the C. I. O. against the Companies, as basis for a claim of violation of this Court's Order of January 21, 1939:

(1) Principally, that the Companies have continued to bargain collectively with the I. B. E. W. and deal with its Grievance Committees, and have refused to bargain with the C. I. O. or its Grievance Committees, as such.

This charge is true; but we are advised and believe that in view of the selection of the I. B. E. W. by a large majority of our employees, our course is that required by Sec- [fol. 41] tion 9(a) of the National Labor Relations Act and by the Order of the Board as modified and interpreted by the Supreme Court.

(2) That the Companies failed to post and keep posted the Notices to Employees, as required by the Board's Order as granted enforcement by this Court.

This charge is wholly untrue; our compliance as to the Notices was careful and complete; and a representative of the Regional Director visited our premises and checked our compliance, which the Order placed under the administrative supervision of the Regional Director.

(3) That the Companies have permitted officers and

premises, and have refused access to officers and agents of the C. I. O. who were not employees of the Companies.

The policy of these utility Companies has naturally been to exclude from their operating premises (aside from offices to which customers come) persons who are not employees and would take up the time of employees and might more or less disturb operations. Our Contracts with the I. B. E. W. provide that it shall not solicit members on Company property or time. Our policy and effort have been to discourage and prevent the carrying on of labor organization activities on Company premises, and to exclude non-employees. However, inasmuch as we have valid and subsisting Contracts with the I. B. E. W. as the majority labor organization, under which Grievance Committees are constituted for the adjustment of grievances between employees and Management, we have issued limited passes to certain officers of the I. B. E. W., specifically restricted to access for Grievance Committee work and collective bargaining with Management (see copy of card attached to the accompanying affidavit of Patrick McGrath); and I believe this restriction on access has been enforced. As we do not deal with the minority organization, we have issued no passes to its non-employee agents.

(4) That we have granted the request of five of the seven I. B. E. W. Local Unions that we honor payroll deduction authorizations, when signed by their members individually, asking that their dues be deducted on our payrolls.

As shown in the accompanying affidavit by Dr. J. J. Wittmer, the Companies have done this for such labor organ-[fol. 42] izations as have asked for it, without discrimination, and made public announcement of the request of certain Local Unions and the granting of it. Such authorizations by their individual members have been made and signed in a manner conforming to the laws of the State of New York (Personal Property Law, Section 46). No Union of the C. I. O. has asked for a like procedure. It would have been, and would now be, granted on exactly the same basis, if requested. Such a procedure related only to employees who were already members of the Local Union requesting it, and has no operation as to non-members of that Local Union.

(5) That one of the Companies transferred two boiler cleaners from one station to another because of their C. I. O. activities.

This charge is false. The two men were transferred only temporarily, for operating reasons due to particular work, and were returned to their first station as soon as it was finished. Union membership or non-membership had nothing to do with it (see affidavit of Edward C. M. Stahl herewith).

(6) That one of the Companies "used espionage" (detectives), contrary to the Board's Order, to obtain information as to union activities among employees.

Such a charge is false, and is not supported by the one affidavit (Wallace) to which the motion refers. The Wallace affidavit alleges various activities and asserted statements by one Mellet, an employee said to be a shop steward of the I. B. E. W. Mellet is alleged to have made statements about a fellow employee, a supervisor. There is not even hearsay support for a charge of the use of detectives or other espionage.

(7) That at the 1939 annual meeting of the stockholders of the Consolidated Edison Company, I stated or intimated that the Companies have decided or were going to put in force a "closed shop contract" contrary to the Board's Order.

This is complete misrepresentation of what I said. My statements to the stockholders were to the same effect as my letter to the President of the C. I. O. The stenographer's minutes of the stockholders' meeting shows what I said, as follows:

"I want to say that at the present time the company is reviewing the membership of the International Brotherhood of Electrical Workers as to their membership up to date, [fol. 43] and that examination will be completed very shortly, and there is every reason to believe that the proportionate membership as it existed in the beginning exists today. Under those circumstances, where a majority of the eligible employees belong to a proper legal labor organization for collective bargaining, the company is only required to deal with that organization. And we have so notified the C. I. O., that we will not as an organization deal with them.

"I might say for your information that the Company receives the personal complaint or grievance of any individual employee, he can protest anything that he chooses as an individual, and his protest will be received. Where it comes

to a question of dealing collectively the only collective bargaining agency is the International Brotherhood of Electrical Workers."

(8) Generally, that some employees who are members of the I. B. E. W. engaged in various union activities on Company premises, and that like activities by C. I. O. members were interfered with and discouraged, and that some employees exercising in part minor supervisory duties (but usually members of the I. B. E. W.) favored the I. B. E. W. and said or did things to encourage membership in the I. B. E. W.

Such charges are largely hearsay, and in many instances relate to matters alleged to have taken place before January 21, 1939, the date when enforcement became effective. Before that date, the Board's Order had been stayed, first by the Order, and later pursuant to the Rules, of this Court; and our compliance therewith had been without legal compulsion. The instances charged are very few, and affect but few of the 37,000 employees of the Companies. In no case is it claimed that any of these instances were brought to the attention of Mr. Low, Dr. Wittmer, myself, or any other officer of the Companies, although I had written the C. I. O. that I would deal "promptly and adequately" with any instances of violations brought to my attention. In view of the incessant activity of the C. I. O. organizers and the false and malicious character of their many circulars and oral statements, resentment may have been provoked in a number of instances; and perhaps a few individuals, among the employees and in minor supervisory positions, may have said or done things which were contrary to the policy and instructions of Management to discourage and prevent all union activities on Company property and time, by any [fol. 44] labor organization. If many of our employees of many years' service resented the C. I. O. tactics and some of them were unable wholly to conceal a preference for the I. B. E. W., they were only human; but, whatever may have been their individual rights of speech under such circumstances, the Companies and their executive officers have discouraged, and at least have endeavored to minimize, all such discussions among employees on Company property and time. From such information as I from time to time received, I have no doubt that agents and members of the C. I. O. were themselves flagrant and habitual offenders.

We received a number of emphatic protests from the I. B. E. W. that its representatives were denied the privileges claimed to be due them, under Section 9(a) of the National Labor Relations Act, as the organization selected by a large majority of the eligible employees of the Companies, although we have at all times since this Court's enforcement Order of January 21, 1939, and theretofore, endeavored in good faith to observe the Order of the Board as modified and the provisions of the National Labor Relations Act.

The more detailed facts as to each of the above-summarized matters are stated in the accompanying affidavits, which answer the principal mis-statements of fact in the moving affidavits. In a few instances, due to illness or absences, answering affidavits have not been obtainable in the short available time. By failing to submit answering affidavits under such circumstances, the Companies do not admit the allegations of the moving affidavits, but will ask leave to supply affidavits later, as to any matters which are material.

F. L. Carlisle

Subscribed and sworn to this 22nd day of May, 1939.
D. M. Newman, Notary Public, Kings County.

[fol. 45] EXHIBIT "A" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): TYPICAL CONTRACT BETWEEN I. B. E. W. AND THE COMPANIES

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers Through Its Local Union No. B829

Effective June 15th, 1937

[fol. 46] Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Edison Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and

conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Edison Company who are members of the Brotherhood and enable the Edison Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Edison Company [fol. 47] recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Edison Company, or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in ex-

cess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Edison Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Edison Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. [fol. 48] Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider

Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider

weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

{ J. J. D. / W. J. E. / E. F. G. / D. W. T. } { R. H. T. / C. M. B. Jr. }

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Edison Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars ($5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

[fol. 49]

Rider

to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than $40.00 per week and entitled to 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of $2.00 per week; and to provide further that employees who are not entitled to a 5% increase

under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of $1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed June 15th, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President; International Brotherhood of Electrical Workers, by D. W. Tracy, International President; Attest: C. M. Breidenbach, Jr., Assistant Secretary; Local Union No. B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F. Galschjodt.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Edison Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Edison Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Edison Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

[fol. 50]

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the follow-

ing factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

(a) Length of continuous service;
(b) Knowledge, training, ability, skill and efficiency;
(c) Physical fitness;
(d) Family status, number of dependents, etc.

10. The Edison Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Edison Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Edison Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Edison Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Edison Company and the Brotherhood or its members employed by the Edison Company, as to the meaning, application or operation of any provision of this agreement, [fol. 51] such dispute or difference shall be settled forthwith

in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First: Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second: Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third: Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth: Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Edison Company; and

Fifth: In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Edison Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Edison Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Edison Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the

next regular meeting may be presented at any time in accordance with the foregoing provision.

[fol. 52] 15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Edison Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Edison Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of

negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight [fol. 53] in such negotiations to the relatively high degree of continuity of employment which the Edison Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Edison Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In Witness Whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President; International Brotherhood of Electrical Workers, by D. W. Tracy, International President; Attest: C. M. Breidenbach, Jr., Assistant Secretary; Local Union No. B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F. Galschiodt

[fol. 54] EXHIBIT "B" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): PRELIMINARY NOTIFICATION OF COMPLIANCE WITH THE BOARD'S ORDER AS MODIFIED

UNITED STATES OF AMERICA

before the

NATIONAL LABOR RELATIONS BOARD

Case C-245

IN THE MATTER OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, Westchester Lighting Company

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affiliated with the Committee for Industrial Organization

To the Regional Director of the National Labor Relations Board, for the Second Region:

Pursuant to the Order of the National Labor Relations Board dated November 10, 1937, as modified by the Supreme Court of the United States on December 5, 1938, and the final decree entered upon the mandate of the Supreme Court dated January 12, 1939, by the United States Circuit Court of Appeals for the Second Circuit on January 21, 1939, You are Hereby Notified as follows:

The respondent Companies are thereby required, within ten (10) days from the service upon them (or their attorneys) of a copy of the final decree of the Circuit Court of Appeals, which was served on January 31, 1939, to notify you in writing as to "what steps the respondents have taken to comply therewith."

(1) The respondents have been and are complying in all respects, without prejudice and subject to full reservation of their rights, with the provisions of Paragraph "1" of

the Board's Order of November 10, 1937, as modified by the Supreme Court of the United States.

(2) In advance of the coming down of the mandate of the Supreme Court on January 12, 1939, and the entry of a final decree thereon on January 21, 1939, the respondents Consolidated Edison Company of New York, Inc., and New York and Queens Electric Light and Power Company [fol. 55] on or about December 22, 1938, made payments, without prejudice, of substantially more than half of the sums awarded as "back pay" to each of the six men specified in Paragraphs "2a" and "2b" of the Board's Order; and thereafter as soon as the requisite computations of net balances remaining payable on the awards had been made and approved in behalf of the Board, the named respondents made on or about January 17, 1939, the final payments on the awards to such persons, thereby completing such payments of the awards before the entry of the final decree of the Circuit Court of Appeals.

(3) Furthermore, in pursuance of Paragraph "2a" of the Board's Order, the respondents Consolidated Edison Company of New York, Inc., and New York and Queens Electric Light and Power Company on or about January 16, 1939, duly notified each of the six men therein named that they might return to work on the following Monday, January 23, 1939. Each of the six men reported for work on that date, and were reinstated in active employment, and are at work as employees of the respondents, without prejudice to their seniority rights and other privileges. This notification was given prior to the entry of the final decree of the Circuit Court of Appeals.

(4) Paragraph "2c" of the Board's Order requires the respondents to post, and to keep posted for thirty (30) days, in conspicuous places through their offices, buildings, plants, and other places of employment, notices containing and stating the matters and things enumerated and stated by the Board in such Paragraph "2c", which was not specifically amended by the decision of the Supreme Court. The respondents have been and are willing to comply fully with Paragraph "2c" of the Board's Order, but the matter has been and is held in abeyance, without prejudice to the respondents' rights, to permit the consideration of sundry

suggestions of counsel for the C. I. O. that the form of notice should be supplemented and substantially varied from that specified in Paragraph "2c" of the Board's Order. Any delay in this respect has been and is in no way the fault of the respondent Companies or their counsel. Promptly after the matter has been considered by general counsel for the Board, the respondents will print and post the notices, in the form and substance prescribed by the Board's Order or in such variant form as may be agreed upon by the respondents with the Board. As soon as the notices have been printed and posted, the respondents will notify you further; but under the circumstances they have not wished to defer notification of their compliance in other [fol. 56] respects with the Board's Order as amended by the Supreme Court of the United States.

New York, February 1, 1939.

Respectfully submitted, Consolidated Edison Company of New York, Inc., by A. Augustus Low, Vice President; Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company.

State of New York,
County of New York, ss:

A. Augustus Low, being duly sworn, says: I am a Vice President of the Consolidated Edison Company of New York, Inc., and Brooklyn Edison Company, Inc. In the course of my duties as such Vice President, I have been and am familiar with the matters and things referred to in the above-stated notification to the National Labor Relations Board. I have read the foregoing notification, and know the contents thereof. The same is true to the best of my knowledge, information and belief.

A. Augustus Low.

Subscribed and sworn to before me this 1st day of February, 1939. D. M. Newman, Notary Public, Kings County.

[fol. 57] EXHIBIT "C" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): NOTIFICATION OF COMPLETION OF COMPLIANCE WITH THE BOARD'S ORDER AS MODIFIED

UNITED STATES OF AMERICA

before the

NATIONAL LABOR RELATIONS BOARD

Case C-245

In the Matter of Consolidated Edison Company of New York, Inc., and its affiliated Companies Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company,

and

United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization

To the Regional Director of the National Labor Relations Board, for the Second Region:

Referring further to the notification sent to you on February 1, 1939, and pursuant to the Order of the National Labor Relations Board dated November 10, 1937, as modified by the Supreme Court of the United States on December 5, 1938, and the final decree entered upon the mandate of the Supreme Court dated January 12, 1939, by the United States Circuit Court of Appeals for the Second Circuit on January 21, 1939, you are hereby notified as follows:

Complying with Paragraph 2c of the Board's Order, the respondent Companies have this day posted on bulletin boards and other conspicuous places through their offices, buildings, plants, and other places of employment, notices stating each of the matters and things set out in Paragraph 2c of the Board's Order, of which notice a copy is hereto annexed, in the form posted by the Consolidated Edison Company of New York, Inc. This form of notice, with variance as to the name of the Company, has been posted by each of the undersigned Companies. Such notices will

remain posted during at last thirty consecutive days. The circumstances under which the notices have not been put up sooner are known to you.

Supplementing the notification given you on February 1, 1939, the undersigned Companies hereby notify you that [fol. 58] they have now complied with the Board's Order as modified, and will continue to comply therewith.

February 20, 1939.

Respectfully submitted, Consolidated Edison Company of New York, Inc. By (Signed) A. Augustus Low, Vice President; Brooklyn Edison Company, Inc.; New York and Queens Electric Light and Power Company; Westchester Lighting Company; The Yonkers Electric Light and Power Company; New York Steam Corporation; Consolidated Telegraph and Electrical Subway Company.

State of New York,
County of New York, ss:

A. Augustus Low, being duly sworn, says: I am a Vice President of the Consolidated Edison Company of New York, Inc., and Brooklyn Edison Company, Inc. In the course of my duties as such Vice President, I have been and am familiar with the matters and things referred to in the above-stated notification to the National Labor Relations Board. I have read the foregoing notification, and know the contents thereof. The same is true to the best of my knowledge, information and belief.

(Signed) A. Augustus Low.

Subscribed and sworn to before me this 20th day of February, 1939. D. M. Newman, Notary Public Kings County.

Form of Notice Annexed

[fol. 59] Exhibit "D" (Attached to Affidavit of Floyd L. Carlisle): Notice to Employees

Notice to Our Employees

Paragraph 1 of the Order of the National Labor Relations Board dated November 10, 1937, as modified accord-

ing to the Opinion and Mandate of the Supreme Court of the United States and the Final Decree of Enforcement entered by the United States Circuit Court of Appeals for the Second Circuit, provides as follows:

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated Companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents'

time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

g. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

Notice to Employees

The undersigned Company, in accordance with the Order of the National Labor Relations Board dated November 10, 1937, as modified by the decree of enforcement entered by the United States Circuit Court of Appeals for the Second Circuit on January 21, 1939, pursuant to the Opinion and Mandate of the Supreme Court of the United States, does hereby, on behalf of itself and its officers, agents, successors and assigns, notify its employees as follows:

I. The Order of the National Labor Relations Board dated November 10, 1937, as modified by the decree of enforcement entered by the United States Circuit Court of Appeals for the Second Circuit on January 21, 1939, pursuant to the Opinion and Mandate of the Supreme Court of the United States, has thereby been granted enforcement, and is binding upon the undersigned Company. A copy of Paragraph 1 of the Board's Order as so modified is herewith posted, as a part of this notice. The Company will cease and desist in the manner aforesaid, and will abide the Order and comply therewith.

II. The employees of the undersigned Company are free to join or assist any labor organization for the purposes of

collective bargaining with the Company. The Company will bargain collectively with any labor organization entitled thereto, and will not discharge, or in any manner discriminate against, members of United Electrical and Radio Workers of America, or any other labor organization of its employees, or any person assisting such organization, by reason of such membership or assistance. The Company will not discharge, or in any manner discriminate against, any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of its employees.

This notice will remain posted during at least thirty consecutive days from the date of posting. February 20, 1939.

Consolidated Edison Company of New York, Inc.

[fol. 60] EXHIBIT "E" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): NOTICE TO EMPLOYEES

To Our Employees

The Order of the National Labor Relations Board as to this Company having been modified in the respect hereinafter stated, and in other respects upheld, by the Opinion and Mandate of the Supreme Court of the United States and the final decree thereupon entered by the United States Circuit Court of Appeals for the Second Circuit, the undersigned Company has duly notified the Board that the Company has complied, and will continue to comply, with such Order as so modified.

The Opinion of the Supreme Court said that "We conclude that the Board was without authority to require the petitioning Companies to desist from giving effect to the Brotherhood Contracts", one of which is in force between the undersigned Company and the International Brotherhood of Electrical Workers; and the Court modified the Board's Order by striking out the provision which would have in effect abrogated those Contracts. Concerning the effect of former sub-division (g), which is now sub-division (f) of the Board's Order as so modified, the Supreme Court said:

"Subdivision (g) of that paragraph, requiring the Companies to cease recognizing the Brotherhood 'as the

exclusive representative of their employees', stands on a different footing. The contracts do not claim for the Brotherhood exclusive representation of the Companies' employees but only representation of those who are its members, and the continued operation of the contracts is necessarily subject to the provision of the law by which representatives of the employees for the purpose of collective bargaining can be ascertained in case any question of 'representation' should arise. Section 9. We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law."

For further details of the decision of the Supreme Court, reference should be made to the Opinion of the Court, of which a copy in full has been previously furnished you.

The collective bargaining Contracts between this Company and the International Brotherhood of Electrical Workers and its Local Unions are in full force and effect, and will be observed by the Company in accordance with the foregoing.

February 20, 1939.

Consolidated Edison Company of New York, Inc.

MEMBERSHIP AMONG EMPLOYEES OF THE COMPANIES

International Brotherhood of Electrical Workers Membership

In

Consolidated Edison Company of New York, Inc., and Affiliated Companies
Determined from Review of Membership Records
Locals B825, B826, B828, B829, B830, B832 and B839
During March, 1939

Company	Total number of employees	Not eligible	Balance eligible	Members	%	Members with dues paid but signatures not available for verification		Total percentage including unverified signatures
						Number	%	
Consolidated Edison Company of New York, Inc.	22,050	1,050	21,000	12,150	57.8	716	3.4	61.2
Brooklyn Edison Company, Inc.	6,531	318	6,213	4,561	73.5	...	...	73.5
New York and Queens Electric Light and Power Company	3,427	165	3,262	2,246	68.9	15	0.5	69.4
Westchester Lighting Company and The Yonkers Electric Light and Power Company	2,914	217	2,697	1,616	59.9	4	0.1	60.0
New York Steam Corporation	1,001	55	946	766	81.0	5	0.5	81.5
Consolidated Telegraph and Electrical Subway Company	1,136	15	1,121	813	72.5	...	...	72.5
Totals	37,059	1,820	35,239	22,152	62.8%	740	2.1%	64.9%

[fol. 62] EXHIBIT "G" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): LETTER FROM MR. CARLISLE TO PRESIDENT OF AMALGAMATED FEBRUARY 27, 1939

Consolidated Edison Company of New York, Inc.

Office of Chairman of Board

February 27, 1939.

Mr. John McCurley,
147 Fourth Avenue,
New York City.

DEAR SIR:

Your letter of February 23rd has been received and seems to warrant a reply, in order that you may understand the position of the Companies with which I am identified, as well as the situation presented by your letter.

A very substantial majority of the employees of the Companies of the Consolidated Edison Company group are evidently members of the I. B. E. W. We have been notified to that effect, and are engaged in checking and verifying the membership figures; but the claimed majority seems to be so substantial as to leave no room for doubt as to the free selection and choice of a collective bargaining agency made by a large majority of our employees.

Section 9(a) of the National Labor Relations Act provides, as you know:

"Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

If you have any grounds for claiming that your labor organization has as its members a majority of our employees, we shall be glad to have you submit your data for checking and verification in the same manner in which the I. B. E. W. has submitted its records. So far as can be inferred

[fol. 63] from anything which has been brought to our attention, your organization has only a very small number of our employees as members; and the activities of your organization appear to be conducted largely by persons who are not employees.

Obviously, you cannot in fairness expect these Companies to disregard the selection made by a large majority of their employees, or to undertake to bargain or deal also with a small, perhaps negligible, minority. Our wage scales under subsisting contracts with the I. B. E. W., which the Supreme Court upheld against your attacks, are higher than in other employments. Our scales of old-age, disability and retirement payments are much higher than those prescribed by Federal and State authority. Our responsibility is to the State and City of New York and to our customers, for the furnishing of adequate and economical service without interruption; and the claims of rival labor organizations cannot be permitted to endanger the fulfillment of that responsibility.

These Companies have always permitted and encouraged individual employees and groups of individual employees, as such, to present any grievances freely to management; and there has been and will be no abandonment or limitation of this practice, irrespective of the labor organization to which the employees do or do not belong. Any grievances presented by individual employees, singly or in groups, will be considered and dealt with on their merits, as we have always done. Members of your organization have and may exercise, as individual employees, the same rights in this respect as other employees have, under the proviso in Section 9(a) of the Act.

Your letter stresses and underlines the provision of present sub-division (f), which formerly was sub-division (g), of the Order of the National Labor Relations Board. The Opinion of the Supreme Court stated, as to this sub-division:

"• • • We construe subdivision (g) as having no more effect than to provide that there shall be no interference with an exclusive bargaining agency if one other than the Brotherhood should be established in accordance with the provisions of the Act. So construed, that subdivision merely applies existing law."

These Companies believe that they are in all respects complying in good faith with the Order of the National Labor Relations Board as modified by the Supreme Court, including present sub-division (f) as interpreted by the Supreme Court. If any violation of the Board's Order or of the [fol. 64] National Labor Relations Act comes to our attention, we shall deal with it promptly and adequately. At the same time, we have to take account of the fact that the labor organization selected by a large majority of our employees has notified us that we should not violate Section 9(a) of the Act at the instance of any other organization.

Under all of the circumstances above indicated, we see no reason for a conference with you as to the "representation" of our employees, in disregard of the majority selection.

Very truly yours, (sgd.) F. L. Carlisle, Chairman of Board.

[fol. 65] EXHIBIT "H" (ATTACHED TO AFFIDAVIT OF FLOYD L. CARLISLE): LETTER FROM A. A. LOW TO HAROLD J. STRAUB OF THE AMALGAMATED—MARCH 6, 1939

March 6–1939.

Mr. Harold J. Straub,
147 Fourth Avenue,
New York, N. Y.

DEAR SIR:

Your letters of February 23rd and March 1st have been received. No reason appears for issuing to you, a former employee, a pass or permit for entrance to the properties of the Companies. Your letters are wrong on the facts which they attempt to state.

Under our Contracts in force with the labor organization selected by a large majority of our employees, the representatives of the I. B. E. W. are not permitted to solicit members, collect dues, or carry on organizing work, on Company property. For some time, non-employee representatives of the majority organization have understood that their admission to Company premises, aside from conference with Company executives at 15th Street on collective bargaining matters, is only for conference with employees on Grievance Committee matters pursuant to the I. B. E. W. contracts in force. If this limitation should be vio-

lated by any of them, his privilege to enter Company premises will be revoked. To deny them access to their Grievance Committee members would impair the representation of their members by the majority agency and frustrate the adjustment of grievances.

We have long permitted and encouraged our employees, individually or in groups, to present any grievances freely to the management; and we contemplate no departure from that practice. Their full exercise of that privilege does not call for the issuance of a pass or permit for any non-employee to enter Company premises for organizing work or for any other purpose. We believe that nothing in the Order of the N. L. R. B. commands an exception in your favor.

Very truly yours, (sgd.) A. A. Low.

AAL-MG.

[fol. 65½] [File endorsement omitted.]

[fol. 66] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

RESPONSE OF NATIONAL LABOR RELATIONS BOARD TO MOTION BY AMALGAMATED UTILITY WORKERS TO PUNISH CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ITS AFFILIATED COMPANIES FOR CONTEMPT OF COURT

Comes now the National Labor Relations Board, by its attorneys, and, for the information of the Court, states its position on the motion made by Amalgamated Utility Workers to punish the Consolidated Edison Company of New York, Inc. and its Affiliated Companies for contempt of court, as follows:

[fol. 67] 1. Upon examination of the affidavits filed in support of the motion, the Board suggests that sufficient cause has been shown to warrant an appropriate investigation, pursuant to order of this Court, concerning whether Consolidated Edison Company of New York, Inc. and its Affiliated Companies have committed acts in violation of the decree of this Court entered March 21, 1938, as modified by the order of this Court entered January 21, 1939.

2. The Board stands prepared to participate in such investigation as this Court may deem appropriate and herewith offers its services in such capacity as the Court may direct by its order.

Wherefore, the Board respectfully suggests that the Court make and enter herein an order directing that such investigation be held as the Court may deem appropriate in the premises.

Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 13th day of May, 1939.

[fol. 68] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

Present: Hon. Thomas W. Swan, Hon. Augustus N. Hand, Hon. Robert P. Patterson, Circuit Judges.

CONSOLIDATED EDISON COMPANY OF NEW YORK, et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, et al., Respondents

ORDER DENYING MOTION—Filed June 2, 1939

A motion having been made herein by counsel for Amalgamated Utility Workers for an order adjudging Consolidated Edison Company of New York, Inc., and its Affiliated Companies, and others, in contempt of this court;

Upon consideration thereof it is

Ordered that said motion be and hereby is denied, upon the ground that the moving party has no standing to make said motion.

Wm. Parkin, Clerk.

[fol. 69] [File endorsement omitted.]

[fol. 70] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 71] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PRAECIPE FOR RECORD—Filed Aug. 30, 1939

SIRS:

Please Take Notice that respondents International Brotherhood of Electrical Workers, International Brotherhood of [fol. 72] Electrical Workers, Local Union No. B-825; International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-830 designate the following portions of the record in this cause and request that they be incorporated into the transcript of record to be certified by the Clerk of this Court, and printed, on the application of Amalgamated Utility Workers to the Supreme Court of the United States for a writ of certiorari to review an order made by the United States Circuit Court of Appeals for the Second Circuit made on or about June 2, 1939, which denied the movant's motion for an order adjudging Consolidated Edison Company of New York, Inc., et al., in contempt of Court, etc., to wit:

Notice of motion served by solicitors for International Brotherhood of Electrical Workers, et al., dated May 18, 1939.

Dated New York, N. Y., August 29, 1939.

Yours, etc., Isaac Lobe Straus, Delafield, Marsh, Porter & Hope, and Claude A. Hope, Solicitors for International Brotherhood of Electrical Workers, et al., 20 Exchange Place, New York City.

[fol. 73] To William Parkin, Esq., Clerk of the United States Circuit Court of Appeals for the Second Circuit, Federal Building, Foley Square, New York, N. Y.

Boudin, Cohn & Glickstein, Esqs., Solicitors for Amalgamated Utility Workers, 20 West 43rd Street, New York, N. Y.

Whitman, Ransom, Coulson & Goetz, Esqs., Solicitors for Consolidated Edison Company of New York, Inc., et al., 40 Wall Street, New York City.

Charles Fahy, Esq., General Counsel, National Labor Relations Board, Shoreham Building, Washington, D. C.

Allan Perl, Esq., Acting Regional Attorney, National Labor Relations Board, Woolworth Building, New York City.

[fol. 74] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

NOTICE OF MOTION TO DISMISS

SIRS:

Please Take Notice, that at a term of this Court to be held in the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the [fol. 75] 22nd day of May, 1939, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, in behalf of International Brotherhood of Electrical Workers; International Brotherhood of Electrical Workers, Local Union No. B-825, International Brotherhood of Electrical Workers, Local Union No. B-839; International Brotherhood of Electrical Workers, Local Union No. B-832; International Brotherhood of Electrical Workers, Local Union No. B-826; International Brotherhood of Electrical Workers, Local Union No. B-828; International Brotherhood of Electrical Workers, Local Union No. B-829; and International Brotherhood of Electrical Workers, Local Union No. B-839, the said International Brotherhood of Electrical Workers and each and all of its said Local Unions aforesaid being affiliates of the American Federation of Labor, will move, preliminarily to the hearing of the motion of the Amalgamated Utility Workers, that the petition and motion of Amalgamated Utility Workers, affiliated with the Utility Workers Organizing Committee, Congress of Indus-

trial Organizations, and all proceedings herein thereon, be Dismissed, upon the grounds:

(1) That the Amalgamated Utility Workers has no standing, under the National Labor Relations Act or otherwise, to institute and maintain the proceeding and motion as set forth in the notice of motion and petition of the Amalgamated Utility Workers;

(2) That the motion papers fail to show whether the motion and the proceeding are prosecuted by the Amalgamated Utility Workers as in the nature of a civil con-
[fol. 76] tempt or a criminal contempt; that the facts alleged in the motion papers and accompanying affidavits do not state and support a charge of either a civil contempt or a criminal contempt, against the employers named; and that neither the motion nor the accompanying affidavits shew or allege facts which would establish that any damages were suffered by the complaining labor organization, so as to support a finding of civil contempt;

(3) That the matters and things stated in the motion and accompanying affidavits are not of judicial cognizance upon the facts alleged and at this time;

(4) That the motion is in disregard of the Opinion of the Supreme Court of the United States on December 6, 1938, in the review proceedings in which the motion is entitled and brought, which Opinion interpreted the parts of the Order of the National Labor Relations Board on which the said motion relies; and that the motion is in effect to secure an enlargement and modification of the Order of the National Labor Relations Board and the final Decree of this Court and by implication and inference to expand the scope and operation of the Order and Decree beyond the fair meaning of what was intended to be prohibited in the light of the issues, so as to make the Board's Order as modified apply to and determine and prohibit matters not litigated, determined and prohibited by Such Order and Decree;

[fol. 77] (5) That inasmuch as the Amalgamated's motion was brought without legal right, the "response" thereto and "suggestion" by counsel for the National Labor Relations Board are unauthorized and cannot operate to support or cause to be prosecuted a motion which the Amalgamated Utility Workers has no lawful authority to institute or maintain under the National Labor Relations Act; and

(6) That the facts stated in the said motion and accompanying affidavits are insufficient to show or constitute a violation of the modifying Decree entered by this Court on January 21, 1939, granting enforcement of the Order of the National Labor Relations Board entered November 10, 1937, as modified and interpreted by the Opinion of the Supreme Court of the United States on December 6, 1938; and that the undersigned will, at the time and place above stated, move the Court for such other and further relief as may be just and appropriate in the premises.

New York, May 18, 1939.

(Sgd.) Claude A. Hope, Isaac Lobe Straus, of Counsel. Isaac Lobe Straus, Delafield, Marsh, Porter & Hope and Claude A. Hope, Solicitors for International Brotherhood of Electrical Workers, et al., 20 Exchange Place, New York, N. Y.

[fol. 78] To:

Whitman, Ransom, Coulson & Goetz, Solicitors for Consolidated Edison Company of New York, Inc., et al., No. 40 Wall Street, New York, N. Y.

Boudin, Cohn & Glickstein, Esqs., Solicitors for Amalgamated Utility Workers, No. 20 West 43rd Street, New York, N. Y.

Charles Fay, Esq., General Counsel National Labor Relations Board, Shoreham Building, Washington, D. C.

Allan Perl, Esq., Acting Regional Attorney, National Labor Relations Board, No. 120 Wall Street, New York, N. Y.

[fol. 79] Order Denying Motion to Dismiss

Motion denied on ground that the matters submitted in support thereof should properly be asserted in opposition to the Amalgamated Utility Workers motion to punish for contempt.

June 2, 1939.

T. W. S., A. N. H., R. P. P., Cjj.

[fol. 80] Clerk's certificate to foregoing pages omitted in printing.

[fol. 81] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 16, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.